

Message Text

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ACTION AF-10

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10

L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 USIA-06

IO-13 OMB-01 HA-05 ACDA-12 MCT-01 /091 W

-----118273 241049Z /17

P 241002Z MAR 78

FM AMEMBASSY KINSHASA

TO SECSTATE WASHDC PRIORITY 8836

INFO AMCONSUL LUBUMBASHI

AMCONSUL BUKAVU

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FOR AF/C

E.O. 11652: N/A

TAGS: PINS, PINR, SHUM, SOPN, CG

SUBJECT: ZAIRIAN COUP PLOT TRIAL: ASSESSMENT OF COURT PROCEEDINGS

REF: A) STATE 070738; B) KINSHASA 2539

1. SUMMARY: QUESTIONS HAVE BEEN RAISED AS TO THE DEGREE TO WHICH THE RECENT COUP TRIAL CONFORMED TO ZAIRIAN LAW (REF A). BASED UPON THE OBSERVATIONS OF EMBOFFS WHO ATTENDED THE TRIAL, EXAMINATION OF MEDIA COVERAGE OF THE PROCEEDINGS, AND A REVIEW OF THE PERTINENT SECTIONS OF THE ZAIRIAN CONSTITUTION AND THE ZAIRIAN CODE OF MILITARY JUSTICE (PARTICULARLY THOSE CITED BY THE DEFENSE AND PROSECUTION), EMBASSY BELIEVES THAT TRIAL PROCEEDINGS FAILED TO CONFORM FULLY TO ZAIRIAN LAW IN SEVERAL RESPECTS.

END SUMMARY

2. AS REPORTED REF B, THE DEFENSE ATTORNEYS CHALLENGED THE GOZ'S CASE AGAINST THE DEFENDANTS ON SEVERAL GROUNDS. THESE CHALLENGES WERE REJECTED OUT OF HAND BY THE PROSECUTION, WHICH

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ALSO IGNORED DEFENSE CLAIMS REGARDING PROCEDURAL IRREGULARITIES IN THE CONDUCT OF THE TRIAL ITSELF BY THE GERNERAL COURT MARTIAL BOARD. THE APPARENT VIOLATIONS OF ZAIRIAN LAW AS NOTED BY THE EMBASSY ARE THE FOLLOWING:

A) A MILITARY COURT CAN BE GIVEN JURISDICTION OVER CIVILIANS FOR SPECIFIC OFFENSES UNDER ARTICLE 49 OF THE CONSTITUTION (AS

RECENTLY REVISED). HOWEVER, THIS REQUIRES A PRESIDENTIAL ORDER WHICH, IF IT WAS ISSUED, HAS NOT YET COME TO OUR ATTENTION.

B) THE PENALTIES ASKED FOR SEVERAL OF THE DEFENDANTS--SPECIFICALLY THOSE 21 CHARGED WITH "MILITARY PLOT"--WERE IN EXCESS OF THE MAXIMUM PEACETIME PENALTY OF 5 TO 10 YEARS IMPRISONMENT. THE DEATH SENTENCE, WHICH SEVEN OF THESE DEFENDANTS IN FACT RECEIVED, IS APPLICABLE ONLY IN TIME OF WAR OR IN CERTAIN CIRCUMSTANCES CLEARLY SPECIFIED IN THE CODE OF MILITARY JUSTICE (AND WHICH DID NOT APPLY TO THE CASE AT HAND).

C) SECTION 237 OF THE CODE OF MILITARY JUSTICE INVESTS THE PRESIDENT OF THE COURT MARTIAL BOARD WITH THE AUTHORITY AND RESPONSIBILITY TO FOLLOW UP LINES OF INQUIRY REGARDING NEW EVIDENCE OR WITNESSES WHICH HAVE A CLEAR AND EVIDENT BEARING UPON THE GUILT OR INNOCENCE OF THE ACCUSED. IN SEVERAL INSTANCES HE IGNORED DEFENSE REQUESTS TO DO SO.

D) IN WHAT WE BELIEVE WAS A VIOLATION OF THE ZAIRIAN RULES OF EVIDENCE, THE PROSECUTOR INTRODUCED NEW EVIDENCE TO THE COURT DURING HIS READING OF THE INDICTMENTS (AFTER INITIAL CROSS-EXAMINATION OF THE DEFENDANTS) AND DURING HIS FINAL REBUTTAL OF DEFENSE ARGUMENTS. THE PROSECUTION ALSO LEVIED NEW AND MORE SERIOUS CHARGES AGAINST SEVERAL DEFENDANTS MIDWAY THROUGH THE TRIAL (AND OBTAINED CONVICTIONS ON THESE NEW CHARGES) IN APPARENT CONTRAVENTION ONCE AGAIN OF THE CODE OF MILITARY JUSTICE, WHICH LIMITED OFFICIAL USE

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RESERVES SUCH ACTION FOR THE PRESIDENT OF THE COURT MARTIAL BOARD.

E) EMBASSY ALSO BELIEVES THAT THE GOVERNMENT CURTAILED THE DEFENDANTS' CONSTITUTIONAL RIGHT (ARTICLE 49) TO APPEAL. SECTION 279 OF THE CODE OF MILITARY JUSTICE STATES THAT THE DEFENSE HAS FIVE DAYS IN WHICH TO SUBMIT A WRITTEN APPEAL OF THE MILITARY COURT'S DECISION. THE EXECUTION OF SENTENCES MUST THEN BE DELAYED FOR AT LEAST FORTY-EIGHT HOURS FROM THE TIME OF SUBMISSION OF THE APPEAL SO THAT THE GENERAL COURT MARTIAL BOARD MAY CONSIDER THE APPEAL. THE EXAMINATION OF THE APPEAL MAY ALSO REQUIRE THE PRESENTATION OF DEPOSITIONS FROM THE ARIOUS PARTICIPANTS REGARDING SPECIFIC POINTS WHICH ARE CHALLENGED IN THE APPEAL, AS WELL AS THE EXAMINATION OF THE RECORD OF THE PROCEEDINGS. THIS APPEAL PROCESS CANNOT BE SHORTENED EXCEPT IN TIME OF WAR, A STATE OF EMERGENCY OR SIEGE, OR UNLESS IT IS NECESSARY TO ACT QUICKLY IN ORDER TO RESTORE PUBLIC ORDER. WHILE NONE OF THESE EXCEPTIONAL CONDITIONS HAS BEEN PROCLAIMED AS APPLICABLE (AND EMBASSY DOES NOT BELIEVE A CONVINCING CASE COULD BE MADE FOR SUCH ACTION), IT IS CONCEIVABLE GOZ WOULD ARGUE THAT PUBLIC ORDER WAS AT STAKE. ON BALANCE, EMBASSY JUDGES THAT 13 DEFENDANTS WHO WERE EXECUTED

ABOUT 14 HOURS AFTER SENTENCING DID NOT BENEFIT FROM DUE PROCESS
UNDER APPEAL PROCEDURE.

3. COMMENT: WISH TO STRESS PRELIMINARY NATURE OF ABOVE ASSESS-
MENT, WHICH REPRESENTS OUR BEST JUDGMENT AT THIS TIME BASED
UPON INFORMATION WHICH ADMITTEDLY INCOMPLETE. HOWEVER THERE
APPEARS TO BE SUFFICIENT NUMBER OF QUESTIONABLE PROCEEDINGS TO
PRECLUDE ASSERTION THAT TRIAL CONFORMED FULLY TO ZAIRIAN LAWS.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PRESS COMMENTS, GOVERNMENT OVERTHROW, PLOTS, TRIALS
Control Number: n/a
Copy: SINGLE
Draft Date: 24 mar 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978KINSHA02829
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780130-0256
Format: TEL
From: KINSHASA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780329/aaaaaxvc.tel
Line Count: 124
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: a7f437be-c288-dd11-92da-001cc4696bcc
Office: ACTION AF
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 78 STATE 70738, 78 KINSHASA 2539
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 26 apr 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3213407
Secure: OPEN
Status: NATIVE
Subject: ZAIRIAN COUP PLOT TRIAL: ASSESSMENT OF COURT PROCEEDINGS
TAGS: PINS, PINR, SHUM, SOPN, CG
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/a7f437be-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014